

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 940 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SURESHMAL SADRAMAL

Versus

SAIFUDDIN GULAMHUSAIN & ORS. HEIRS OF GULAB HUSAIN

Appearance:

MR BG JANI for Petitioner

MR PV HATHI for Respondent No. 1 to 8

None present for Respondent No. 9, 10

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 07/12/98

ORAL JUDGEMENT

1. The plaintiffs-respondents No.1 to 8 filed Regular Civil Suit No.36/87 in the Court of Civil Judge (J.D.), Palitana against the respondents No.9 and 10 and petitioner herein for removal of the pucca cabin which has been constructed by the respondent No.9 and occupied by respondent No.10 and petitioner. That suit came to be decreed on 14-9-1989.

2. It is not in dispute that after the pronouncement of the judgment by the trial court, the defendant-petitioner applied for obtaining certified copy thereof. Copy of the judgment was ready on 18-9-1989 and the learned counsel for the petitioner does not dispute that immediately thereafter the certified copy was delivered to the petitioner. The plaintiffs-respondent No.1 to 8 put the decree in execution in the month of January, 1990. Notice under Order 21 Rule 22 of C.P.C. was sent to the defendant-judgment debtors including the petitioner and he put appearance in the execution proceedings on 2-2-1990 and thereafter from time to time, request has been made for adjournment of the execution proceedings. It is also not in dispute that the defendant-petitioner filed a purshis in the execution proceedings stating that he continues his advocate Kantilal D. Trivedi as his advocate in the execution proceedings also.

3. Though certified copy of the judgment of the trial court has been obtained well within time, the petitioner or the respondent No.9 have not preferred appeal against the judgment of the trial court within limitation. Appeal has been preferred after nine months and five days of the expiry of period of limitation and application being Misc. Civil Application No.54/90 has been filed by the petitioner and prayer has been made therein that the delay caused in filing of the appeal may be condoned. That application has been contested by the plaintiffs-respondents and under the impugned order dated 7-7-1993, 2nd Joint District Judge, Bhavnagar rejected that application. Hence, this civil revision application before this Court under section 115, C.P.C., 1908.

4. Learned counsel for the petitioner contended that in the matter of condonation of delay caused in filing of the appeal, the Court should take liberal view and in support of this contention he placed reliance on the latest decision of the Supreme Court in the case of N. Balakrishnan vs. M. Krishnamurthy reported on JT 1998 (6) SC 242. It has next been contended that there were bonafide reasons by which the petitioner was prevented from filing the appeal within limitation. He has given out that the family members were busy in connection with the looking after of the brother of the petitioner who was admitted in the Hospital at Jamnagar. Lastly it is contended that in support of this application the petitioner also filed affidavit of the advocate who was representing him in the suit as well as in the execution proceedings.

5. On the other hand, learned counsel for the plaintiffs-respondents No. 1 to 8 contended that the matter is not covered by the decision of the Supreme Court on which reliance has been placed by the learned counsel for the petitioner. It is a case where this application filed for condonation of delay caused in filing of the appeal is nothing but only a malafide act on the part of the petitioner. He has deliberately made the delay in filing of the appeal and as such no indulgence should be granted to him in the matter of condonation of delay caused in filing of the appeal.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

7. Learned first appellate court has recorded a finding of fact that this delay caused in filing of the appeal by the defendant-petitioner is a malafide intention and the explanation furnished for this delay was a false excuse. From the judgment of the first appellate court as well as after hearing the learned counsel for the defendant-petitioner, I am satisfied that it is clearly a case where the defendant-petitioner deliberately made this delay in filing of this appeal. This delay has been made with the intention to see that the plaintiffs-respondents No.1 to 8 may not get the fruits of the decree passed in their favour by the trial court on contest of the matter by the defendant-petitioner. Certified copy of the judgment was obtained well within time and the fact that the defendant-petitioner himself through his advocate put appearance in the execution proceedings and sought adjournment from time to time goes to show that he was knowing very well that the plaintiffs-respondents No.1 to 8 have already put the decree in execution. I find sufficient justification in the approach of the learned first appellate court that when the defendant-petitioner apprehended that now it is very difficult to delay the execution, thought of filing of the appeal against the decree of the trial court in the first appellate court. This is nothing but only a malafide act of the petitioner and the sole object and purpose of filing of the appeal is to delay the execution of decree. In case the defendant-petitioner was really intending to challenge this decree by filing an appeal in the first appellate court then it could have been easily done within the period of limitation. Learned counsel for the petitioner admits that in the family of the petitioner there are as many as seven adult members and even if it is taken that one of the family members was admitted in the hospital at

Jamnagar it was not difficult for his father or for himself or to give instruction to the advocate to file the appeal. It is a fact which has not been controverted by the learned counsel for the petitioner that the father of the petitioner was the person who was looking after the suit in the trial court. So there were three persons available for filing of the appeal if the petitioner was really intending to challenge the judgment of trial court. The explanation furnished is certainly a false excuse. Learned first appellate court has not committed any illegality much less a material irregularity in exercising its jurisdiction in rejecting the application filed for condonation of delay caused in filing of the appeal.

8. The civil revision application is dismissed with costs which is quantified at Rs.1000/- as what Shri P.V. Hathi, learned counsel for the plaintiffs-respondents No. 1 to 8 stated that Rs.1000/- has been paid by the plaintiffs-respondents No.1 to 8 to him for providing them his professional services in the matter. Rule discharged. Interim relief, if any granted by this Court stands vacated.

zgs/-